STATE OF MICHIGAN

COURT OF APPEALS

RUBY TROUPE,

Plaintiff-Appellant,

v

INTERURBAN TRANSIT PARTNERSHIP, MILBOCKER & SONS, INC, and ESTATE of GERALDINE BOGGIANO,

Defendants-Appellees,

and

2/90 SIGN SYSTEMS, INC,

Defendant.

UNPUBLISHED
March 21, 2006

No. 265563
Kent Circuit Court
LC No. 04-008797-NO

Before: Smolenski, P.J., Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting summary judgment to defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff tripped and fell as she walked across the parkway between Burton Street and the sidewalk in front of Boggiano's house. Plaintiff testified that she tripped when her foot caught on something. At the time she fell, plaintiff did not know what she caught her foot on. The day after she fell, plaintiff returned to Boggiano's house and observed a bus stop sign lying in the parkway. Plaintiff surmised her foot got caught on the bus stop sign. Milbocker & Sons and Interurban Transit Partnership filed motions for summary disposition arguing that plaintiff's theory that she tripped over the bus stop sign was mere speculation and conjecture because plaintiff did not know what caused her to trip. The circuit court granted the motions and dismissed the case against defendants.

Plaintiff contends that because she testified that she tripped over something and she discovered the bus stop sign in the same area where she fell the following day, her theory that she tripped over the bus stop sign is not mere speculation, and therefore, the circuit court erred in granting defendants' motions for summary disposition. We disagree.

This Court reviews a trial court's decision to grant or deny a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and documentary evidence presented, viewed in the light most favorable to the non-moving party, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

To establish a prima facie case of negligence, a plaintiff must prove the four elements of duty, breach, causation, and damages. *Henry v Dow Chemical Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005). A plaintiff may use circumstantial evidence to prove the causation element. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). A plaintiff's circumstantial proof must facilitate reasonable inferences of causation, not mere speculation. *Id.* at 164. The Supreme Court in *Skinner* dictated the amount of circumstantial proof a plaintiff must put forth:

> "All that is necessary is that the proof amount to a reasonable likelihood of probability rather than a possibility. The evidence need not negate all other possible causes, but such evidence must exclude other reasonable hypotheses with a fair amount of certainty. Absolute certainty cannot be achieved in proving negligence circumstantially; but such proof may satisfy where the chain of circumstances leads to a conclusion which is more probable than any other hypothesis reflected by the evidence. However, if such evidence lends equal support to inconsistent conclusions or is equally consistent with contradictory hypotheses, negligence is not established." [*Id.* at 166-167, quoting 57A Am Jur 2d, Negligence, § 461, p 442.]

In the present case, plaintiff knew the reason she tripped—her foot got caught on something. However, at the time of her fall, plaintiff did not know what the "something" was that caused her to trip. Plaintiff surmised that her foot got caught on the bus stop sign because, on the following day, she discovered the bus stop sign in the same area where she fell. However, plaintiff's theory that she tripped on the bus stop sign ignores the passage of time between when she tripped and when she discovered the bus stop sign.

Plaintiff tripped at approximately 11:55 p.m. At the earliest, plaintiff discovered the bus stop sign at approximately noon the following day. In between plaintiff's fall and her discovery of the bus stop sign, Milbocker & Sons or one of its subcontractors performed several hours of construction work on the north side of Burton, including the parkway where plaintiff fell. Because of the construction work on the parkway during the period between her fall and her discovery of the sign, plaintiff cannot demonstrate that the sign was at that location on the night of her fall. The sign may simply have been moved to that location during the course of the work performed on the day after her fall. Accordingly, plaintiff's theory that she must have tripped over the bus stop sign is mere speculation and conjecture, remaining only a possibility, not a probability. The trial court correctly granted summary disposition to defendants.

Plaintiff also contends the trial court prematurely granted summary judgment because the time for discovery had not ended and she stood a reasonable chance of developing facts to support her claim that the sign was located on the parkway when she tripped. Because plaintiff raised this argument for the first time on appeal, we decline to address it. See *Booth*

Newspapers, Inc v University of Michigan Bd of Regents, 444 Mich 211, 234; 507 NW2d 422 (1993) (stating that this Court need not address arguments raised for the first time on appeal).

Affirmed.

/s/ Michael R. Smolenski
/s/ William C. Whitbeck
/s/ Peter D. O'Connell